

Minutes

Licensing/Appeals Sub-Committee Wednesday, 23rd April, 2014

Attendance

Cllr Clarke
Cllr McCheyne
Cllr Quirk

Officers Present

Gary O'Shea - Principal Licensing Officer
Chris Pickering - Principal Solicitor
Leanna McPherson - Governance and Member Support Officer

444. Appointment of Chair

Members resolved to appoint Cllr Quirk to chair this meeting of the Sub-Committee.

445. Quasi-Judicial Function

Members were respectfully reminded that, in determining the matter listed under Minute 446 they were exercising a quasi-judicial function with the civil burden of proof. The matter was to be determined on the facts before the Sub-Committee and the rules of natural justice applied.

446. Licensing Act 2003 - Application for a Premises Licence - Tesco Stores Ltd, Warley Hill, Warley, CM14 5HB

The report provided information to advise Members of an application for a new premises license in respect of Tesco Stores Ltd, Warley Hill, Warley, CM14 5HB.

Members were requested to determine the application having regard to the operating schedule, the representations received, the Council's Statement of Licensing Policy and the four Licensing objectives.

In view of concerns raised in both representations relating to the display of notice as required in the regulations, Members were requested to determine the validity of the application as highlighted in paragraphs 6.6 to 6.11 of the report and to either:

i) Agree that on the balance of probability the regulations pertaining to advertising of the application had been complied with and that the application was valid and proceed to determination under 2.2 of the report or

ii) Determine that the application had not been properly made given that on the balance of probably the regulatory requirements relating to advertising of applications had not been sufficiently complied with.

Subject to consideration of the advertising of the application, Members would consider the application before them on its individual merits and therefore no recommendations might be made. However, the available options were:

i) To grant the application in full on the terms and conditions contained in the operating schedule along with any applicable mandatory conditions.

ii) To grant the application in full, modified to such extent as considered appropriate in order to satisfy any relevant representations and to promote the licensing objectives; or

iii) To grant the application in part, with or without additional conditions as considered appropriate in light of representations received.

iv) To refuse the application in its entirety.

Members were reminded that an authorisation was required in respect of any premises where it was intended to conduct one or more of the four licensable activities, these being:

- Sale of alcohol
- Supply of alcohol (in respect of a club)
- Regulated Entertainment
- Provision of Late Night Refreshment

An appropriate authorisation was either, a premises license, a club premises certificate or a Temporary Event Notice.

License holders were required, when offering any licensable activity, to ensure that they promoted the licensing objectives at all times. The operating schedule of the application contained details of the activities applied for and the control measures that the applicant would have in place in order to promote these objectives. Such measures would, where appropriate, be converted into enforceable conditions on any license issued. Those pertaining to this application were reproduced in paragraph 5 of this report.

The four licensing objectives were:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

No objective carried any more weight than any other.

Any representation must be able to demonstrate that on the balance of probability the application in its current form would fail to adequately promote one or more of the licensing objectives specific to the subject premises.

The application was received on 15 January 2014 from Tesco Stores Ltd in respect of a new Tesco store on the site of the old Warley Tavern in Warley Hill, Warley, CM14 5HB. A copy of the application was before Members.

The premise was a retail supermarket situated in a predominantly residential area which would sell a range of retail goods and services. This application sought to add the sale of alcohol for consumption off the premises for the following hours: 06:00 hours until 23:00 hours – daily.

The applicant had stated that they had written policies and training programmes in place, which were used to ensure that staff members were able to promote the licensing objectives. Training was reviewed and refreshed regularly.

Based on the content of the operating schedule, the conditions attached to any license issued (in addition to mandatory conditions) would be:

- All staff must receive training in all aspects relating to the responsible sale of alcohol. Refresher training must be reviewed and offered regularly and copies of relevant training records made available to a licensing officer or the police upon reasonable request.
- The store must promote and comply at all times with a Challenge 25 policy, the operation of which must be advertised through point of sale material within the store.

The regulations to the Licensing Act 2003 outlined the requirements for the advertising of applications. These required the applicant to advertise the application:

- a) For a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority to display a notice... prominently at or on the premises to which the application related where it could be conveniently read from the exterior of the premises...
- b) By publishing a notice in a local newspaper... on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority.

Regulations also required that the applicant gave a copy of the application to each responsible authority on the same day as the day upon which it was given to the licensing authority.

There were no other statutory requirements for advertising of any application, however, the relevant Ward Councillors were notified and details of all applications received along with the time limit for receipt of representations was posted on the Council website.

Officers from the licensing authority had made checks on the display of notices on two occasions, these being 17 January and 11 February. On both occasions more than one notice was observed (2 and 3 respectively).

Two representations had been received from local residents, which were appended to the report.

Whilst both representations raised concern over promotion of the licensing objectives, they also raised concern over a matter of procedure, namely that the application was not appropriately advertised by way of notice, being displayed prominently at or on the premises for a period of approximately one week.

Although the notice had been checked on two occasions (once at the beginning and once at the end of the consultation period) this did not necessarily mean that it had been displayed continuously in accordance with regulatory requirements.

The applicant had been contacted and was adamant that the notice had been displayed in accordance with regulations. They used a third party company to post notices on their behalf and had provided a list of dates when the company visited the site to check on the status of the notices.

Photographs were attached to the report along with the list of dates that the notice was checked.

Whilst failure to advertise appropriately would normally result in delegated authority being used to require an extension or re-starting of the application process, there was clearly a dispute in this instance and therefore, the most appropriate course of action was that it should be left to be determined at the start of the hearing. This would ensure that all concerns and evidence had been appropriately considered.

Members considered the representations and **RESOLVED** that on the balance of probability the application had been advertised in accordance with regulations, the reason for this determination being as follows:

The sub-committee notes that there is a conflict of evidence from the objectors and the applicant and on the balance of probabilities prefers the evidence of the applicant's agent and the Council employee. It was noted that the objector Mr Smith admitted having his dates wrong and the evidence of Mrs Lewis was directly contradictory to the other evidence heard. The sub-committee also noted the lack of photographic evidence from the objectors or contemporaneous complaints to the Licensing Authority. Even for any minor non-compliance with the regulations, the sub-committee do not accept that any prejudice, however minor, is fatal to the application.

Following this resolution, the hearing proceeded as normal.

The concerns expressed in the representations related to the licensing objectives. One representation in particular was concerned with the effects in a residential area of the sale of alcohol for the hours requested specifically in relation to street drinking and increased litter.

No representations had been received from any of the Responsible Authorities.

There were no specific issues arising from this application in relation to the Councils' Statement of Licensing Policy and Members' attention was brought to the relevant section of the Secretary of State's Guidance.

Members were reminded that conditions might be attached to the grant of any license, the hours or activities may be amended as appropriate, or in some cases the application may be refused but any action taken must be appropriate and relevant to promotion of the licensing objectives having considered the full details of the application and representations including testimony from any interested party present at the hearing.

The justification behind any decision to grant or refuse a license application or the attachment of conditions, or variation of terms applied for must be recorded and given to the applicant and any person that had made representation and there was a right of appeal to Magistrates Court by any person or party aggrieved by any decision made by the Sub-Committee.

Members were advised that complaints had been received from both parties that had made representation relating to the handling of the application by the licensing team. A full response had been provided by the Principal Licensing Officer which addressed the main concerns raised and was appended to the report.

Having fully considered the application and the written and oral representations from the applicant and representative, the written and oral representations from two local residents and questioned those present, the Sub Committee **RESOLVED** as follows:

That the application is granted for the sale of alcohol for consumption off the premises but that the permitted hours will be 9.00am to 11.00pm daily and not 6.00am to 11.00pm as applied for.

The reason for this resolution was as follows:

The sub-committee has agreed to the grant of the license but with the condition that the hours of sale will be from 9am to 11am daily. This variation from the applied for hours is on the basis of protecting children from harm. A majority of the sub-committee felt that allowing hours of 6am to 9am will leave the sale of alcohol open to children on their way to school. The sub-committee decided that the conditions submitted by the applicant are insufficient for the promotion of this licensing objective.

All parties were reminded that they had a right to appeal to the Magistrates' Court.